



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

August 13, 2009

Mr. Kevin Cournoyer  
2514 West Street  
Bellingham, WA 98225

**Re: G-P West draft agreed order and public participation plan comments**

Dear Mr. Cournoyer:

This letter is in response to your comments submitted to the Department of Ecology via e-mail July 15, 2009, on the draft agreed order and public participation plan for the G-P West cleanup site in Bellingham. Ecology issued the documents for public review from June 15, 2009, through July 15, 2009. Your comments are repeated below followed by Ecology's response.

**Comment No.1.** You're calling this site G-P West. I think this is highly confusing, if not disingenuous [*sic*], given the fact that the public, through a taxpayer-supported government, the Port of Bellingham, owns this property. I suggest you change the name of the cleanup site to something the [*sic*] reflects public ownership and public liability. Cf. Section VI, Part C of the Agreed Order.

**Response:** Sites are typically named after the owner or operator, the geographic location, or the street name. This site was named after Georgia-Pacific West Inc. when the company still owned the property. The public is familiar with G-P as the former long-term owner and operator of the property. Ecology believes it is best to retain the name because it is recognizable, making it easier for the public to track site activities.

**Comment No. 2.** Do not, as you did on your remarkably biased work on the Whatcom Waterway Cleanup site, release the Remedial Investigation (RI) along with the Feasibility Study (FS) at the same time. This is a terrible idea, and it simply back loads the entire process and reifies conclusions (e.g., the Port's oft stated commitment to an industrial level of cleanup) that we're recklessly established years ago. Release each report separately, starting, of course, with the RI. And involve the public early---at the RI stage. A recent model for this type of approach to public involvement would be the recent RI for the Squalicum Creek cleanup in Bellingham. Cf. page 7 of the Scope of Work (SOW), which specifically states that Ecology, and only Ecology, will review the RI. This must change. Both the public and other parties (e.g., EPA, review boards, et cetera) should be involved at this stage in the process.



**Response:** Issuing the remedial investigation and the feasibility study together provides the linkage between what needs to be cleaned up and potential cleanup options. The Model Toxics Control Act Cleanup Regulation presumes generally that the remedial investigation and feasibility study will be issued as one report for public comment (See WAC 173-340-600(13)(c), providing for public comment on “remedial investigation/feasibility study reports” and that the agency shall “invite public comment on the report”). Remedial investigations provide a comprehensive understanding of the site, including the nature and extent of contamination. These investigations are the basis for assembling and evaluating cleanup alternatives, so the documents inform and refer to each other.

Ecology will occasionally issue such reports for review separately based on site-specific considerations.

In the case of the Little Squalicum Park site, the draft remedial investigation was issued for public review separately only because Ecology does not anticipate requiring the city of Bellingham to complete a feasibility study. Ecology is in the process of transferring the remainder of the required cleanup work to address wood treatment chemicals to EPA as part of its activities at the Oeser Superfund site. If this were not the case, a combined draft RI/FS report for the Little Squalicum Park site would have been issued for public review under MTCA.

Regarding cleanup levels, Ecology has not yet established cleanup levels for this site. The Port of Bellingham, during its due diligence to purchase property at the site, gathered information available at that time about contamination and potential cleanup needs. However, any conclusions drawn by the port are speculative and have no legal standing. In accordance with MTCA, preliminary cleanup levels will be identified in the RI/FS. Following public review of the RI/FS, a draft cleanup action plan describing Ecology’s proposed cleanup for the site, including proposed final cleanup levels, will be developed. The cleanup action plan will be issued for public review as part of a legal agreement called a consent decree.

Cleanup levels for any site are established by evaluating potential contaminant exposure pathways – in other words, how people and the environment could be exposed to site contamination. Exposure pathways depend on how the land will be used. The evaluation of exposure pathways will be part of the RI/FS. Ecology understands that the port has not yet decided whether to use this site for industrial purposes or for other uses. If this decision is not made prior to generating the RI/FS, Ecology will require the port to develop and evaluate cleanup alternatives that are protective of human health and the environment according to both industrial and unrestricted land uses, which could include commercial and residential buildings.

Regarding Ecology review prior to public review, Ecology is charged with ensuring that the work conducted at the site complies with the Model Toxics Control Act, the state’s toxics cleanup law. Therefore, Ecology reviews draft documents prior to public release to make sure they comply with MTCA and are similar in format and content to other RI/FS documents generated for Bellingham Bay. The public and other parties are encouraged to review and comment on the draft RI/FS. Ecology considers and responds to all comments. If comments result in a substantial change to the RI/FS, an updated draft will be issued for public review.

**Comment No.3.** On page 3 of the Public Participation Plan (PPP), you state the following: "The G-P West site is ranked a 5 on Ecology's Hazardous Sites List, indicating the lowest risk of human and environmental exposure to hazardous substances." Writing that statement is this PPP is self-evidently deplorable. This statement is a clear indication of your long-recognized bias when it comes to the Port of Bellingham. As one of your Ecology colleagues stated a few months ago, you're sounding like a "Port employee." Indeed. Please reference the September 21, 2004 letter I've attached (file name: **uses\_hg\_v\_mon.pdf**) from Mark Larsen (The Retec Group, Inc.), which was written during the POB's due diligence period before the purchase of the G-P site. (I want this letter, and all my other attachments, to be a part of the permanent record.) Specifically, look at page 2. Allow me to quote just two sentences, which is referring to mercury: "Soil concentration in this area average from less than 1 mg/kg to about 300 mg/kg, with a single sample detection of **12,000 mg/kg**. Soil vapor in borehole AS3 was between 720,308 ng/m3 and 877,650 ng/m3 as reported in the RI/FS." (Emphasis added. As George Dyson has often stated, *no one has what we have*.) Later in the letter, Mr. Larsen assumes that, in accordance with the EPS (so-called "Environmental Protection Standards"), mercury vapor monitors will need to be used on this site.

**Response:** The hazardous site ranking process is a tool Ecology uses to help prioritize sites for cleanup. It looks at the relative risk of people and other forms of life being exposed to contamination at a site compared with other sites.

A number of factors are considered during the assessment. High concentrations of contamination won't necessarily prompt a high-priority ranking if contaminants are inaccessible to people or other forms of life. It is important to note that site hazard assessments are based on preliminary information, prior to the extensive sampling and site characterization work that are part of the remedial investigation.

Specifically regarding the G-P West site, even though it received a low-priority ranking through the hazard assessment, Ecology has assigned a high priority to all the Bellingham Bay waterfront cleanup sites as part of the Bellingham Bay Demonstration Pilot, a comprehensive, integrated program of cleanup, habitat restoration and redevelopment work.

**Comment No. 4.** On page 5 of the PPP, you state seven "key community concerns" that you somehow derived from comments during the Whatcom Waterway Cleanup process, which included thousands and thousands of signatures on the Healthy Bay Initiative. As someone who was fully involved in that horrible process, some of your stated concerns are totally bogus and seem intended to predetermine what's on the mind of the public. For example, in no way whatsoever [*sic*], was the public, in the aggregate, at all concerned about "understanding the relationship between land use decisions and cleanup decisions." That's clearly your concern. That's clearly Mike Stoner's concern. That's clearly Frank Schmelk's [*sic*] (POB's lawyer) concern. But it is not a community concern, given the fact that the public clearly demands a residential level of cleanup *throughout* the "G-P West" site. But you and the POB are only interested in, as indicated in the original ILA and declarations made in open court, an industrial level of cleanup as defined by MTCA.

**Response:** Cleanup regulations and the process under MTCA are complicated and at times confusing to the public. Public comments and questions about cleanup projects statewide reveal a need for Ecology to provide clear information about the process so the public can make informed decisions. Ecology feels strongly that understanding the process will lead to more productive community engagement.

Regarding why land use is important for establishing cleanup levels, please see response to Comment No.2 above, fourth and fifth paragraphs.

**Comment No. 5.** Please append the Purchase & Sale Agreement between G-P and the POB to this agreed order. Also, append *all insurance documents* that are related to this site and were created by the POB and AIG.

**Response:** The agreed order is a legal document between Ecology and the Port of Bellingham wherein the port is agreeing to implement a particular scope of work in accordance with MTCA. Ecology was not party to the purchase and sale agreement and insurance documents between G-P and the port, or the agreements between the port and its insurers. These documents are not part of the scope of work Ecology is requiring the Port to implement. Therefore, it would not be appropriate to append them to the agreed order.

**Comment No. 6.** Cf. page 2, Section II---"Jurisdiction"---of the Agreed Order. And then cf. page 5 (Section V, Part I) of the Agreed Order. In Section V, Part I there's a reference to "industrial or mixed use purposes." As I've had to impress upon you repeatedly in the past, any and all references to the phrase "mixed use" are invariably deceiving. Why? There is no such thing as a "mixed use" cleanup standard, according to MTCA. The public has demanded a *residential cleanup standard* (cf. the thousands of signatures on the Healthy Bay Initiative, two thorough, statistically compelling polls, the hundreds of signatures on the Cleanup, Not Cover Up petition, et cetera), not an industrial level of cleanup.

**Response:** Regarding Section V, Part I, this is referring to uses of the site not to cleanup levels. Also see response to Comment No.2 above, fourth and fifth paragraphs.

**Comment No. 7.** Cf. Section V, Part L (page 5) of the Agreed Order. In this part, you'll find references to a so-called "interim action" and "remedial action" performed by the Port. Please provide to the public all records of public notice and participation in these so-called these actions.

**Response:** As the agreed order states, the removal work performed by the port in 2006 was an independent action. This means that the work was done voluntarily and was not directed by Ecology under a MTCA agreement.

Having said this, information from the completion report submitted to Ecology will be incorporated into the draft RI/FS which will be issued for public review.

Although Ecology will take into account previous work done at the site, a full remedial investigation will be completed, and cleanup alternatives will be evaluated based on the current condition of the site.

**Comment No. 8.** Also in the same Part L, you find the following: "...during 2006 the Port abandoned several inactive monitoring wells." Why? Was this abandonment approved by Ecology? Why isn't the Port or Ecology using these monitoring wells? Please explain in detail. And please explain honestly, including references to legal documentation, the Purchase & Sale agreement (if necessary), et cetera.

**Response:** We will update the agreed order so the final version specifically states that two wells were abandoned and five well boxes were repaired.

Both the installation and abandonment/repair work were done voluntarily and were not directed by Ecology under a MTCA agreement. G-P originally installed the wells, and the port performed the abandonment/repair work to address wells damaged during demolition activities. Nonetheless, information collected from these wells will be carried forward into the RI/FS. Furthermore, Ecology anticipates requiring the installation of at least 20 new monitoring wells as part of the remedial investigation work.

**Comment No. 9.** Cf. Section VIII, Part B of the Agreed Order. Under no circumstances should \$6,810.62 be given to the Port of Bellingham.

**Response:** This is referring to costs accumulated by Ecology which the port is agreeing to pay. This is not money that will be given to the port, but money the port must pay Ecology.

Ecology recovers its costs from liable parties for time and other agency expenses incurred for work on cleanup sites. As of March 31, 2009, Ecology had accumulated \$6,810.62 in costs related to the G-P West site. The agreed order is notifying the port that it will be invoiced for these costs, and all costs incurred by Ecology subsequent to March 31, 2009.

Public entities such as the port are eligible to receive grants for cleanup activities performed under a MTCA agreement. The port has a remedial action grant agreement with Ecology to fund 50 percent of the RI/FS costs. However, grant funds can't be applied to Ecology costs.

**Comment No. 10.** In the Agreed Order, Ms. McInerney, you're referred to a "Project Coordinator." In other documents, you're referred to as the "Site Manager." Which is it? If it's the latter, that title should be in the Agreed Order.

**Response:** These titles are functionally the same.

**Comment No. 11.** Page 20 of the Agreed Order has Jim Darling as the POB signatory. Mr. Darling no longer works for the POB.

**Response:** The draft agreed order was issued for public review prior to Mr. Darling's resignation. The agreed order will be revised.

**Comment No. 12.** On page 7 of the SOW, it's stated that issuing a responsiveness summary is at Ecology's "discretion." Please change that. A responsiveness summary should be "required."

**Response:** Responsiveness summaries are not a requirement under the MTCA Cleanup Regulation. However, Ecology has elected to prepare a response to comments received on the draft agreed order and public participation plan (PPP) as stated on page 6 of the PPP. This letter constitutes that response since only one comment letter was submitted to Ecology during the public comment period. Ecology also anticipates preparing responsiveness summaries for comments received on subsequent site cleanup documents issued for public review.

**Comment No. 13.** In the Schedule, you mentioned "long-term monitoring." That suggests to me that you've already planned for an industrial level of cleanup before the RI is even written. Deplorable. Once again, your bias ("port employee") is clouding your judgment. You should not be a part of this process any longer. The public demands a residential level of cleanup, as defined by MTCA.

**Response:** Long-term compliance monitoring will be a requirement of any cleanup regardless of what cleanup levels Ecology ultimately establishes for the site. Post-cleanup monitoring must be conducted to ensure cleanup levels have been and continue to be met. As mentioned previously, Ecology will establish cleanup levels that protect human health and the environment based upon potential contaminant exposure pathways.

**Comment No.13 [sic].** I've followed your career very closely. I've studied your work elsewhere on the former G-P mill site. And I've studied the Port's work on this site. And my conclusions are damning. Under no circumstances should the Port be the site lead for this cleanup. And under no circumstances should you be the site manager. You've demonstrated for years an extraordinary bias in all your dealings with the Port. To substantiate these assertions, please include all of the attachments to this e-mail into the public record----they all represent my "comments" about the Agreed Order and your involvement with it.

**Response:** The Port of Bellingham and G-P are liable for the cleanup of the G-P West site. However, the port elected to be the only signatory to the agreed order with Ecology. Therefore, Ecology will direct and oversee the port's cleanup activities. Should the port refuse to comply with the terms of the agreed order, Ecology could perform the work and recover costs from the port.

To help ensure that cleanup activities are conducted in accordance with MTCA, Ecology invites you to provide comments on public review documents as the site moves through the cleanup process.

This e-mail and the attachments will be included in the record of comments received on the G-P West draft agreed order and public participation plan.

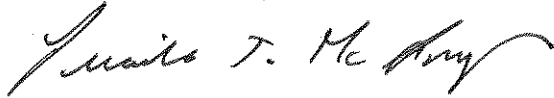
**Comment No. 14 [sic].** This site should be a Superfund site. Ecology's credibility with respect to overseeing cleanup performed by the Port of Bellingham has been, thanks to your efforts, irreparably damaged.

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**Response:** This site has not been considered for cleanup by the federal government under Superfund and it is unlikely to be considered since the site is being worked on by the state.

Ecology appreciates your comments on the draft agreed order and public participation plan for the G-P West site.

Sincerely,

A handwritten signature in cursive script, reading "Lucille T. McInerney".

Lucille T. McInerney, P.E.  
Site Manager

lm/kp

cc: Charles San Juan, Ecology  
Katie Skipper, Ecology  
Kristie Carevich, AAG Ecology Division